

ENLISTING LOCAL GOVERNMENTS IN PROTECTION OF WATER RESOURCES: THE ENVIRONMENTAL PLANNING CRITERIA

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Georgia has a tradition of "home rule," the principle of local management of local affairs. The State Constitution reinforces this tradition by giving local governments virtually autonomous control over local matters, including management of land use within their respective jurisdictions. Because of this tradition, local governments are used to minding their own business, not thinking about the broader, "statewide," consequences of their plans and actions, and not having much interference from outside governments (including the state) in management of land use and development within their jurisdictions.

Since protection of critical water resources (and other environmentally sensitive areas) clearly requires appropriate management of land use and development in the vicinity of these resources, local governments must be enlisted in this effort. Yet the "home rule" provisions of the state constitution severely ties the state's hands in soliciting local government cooperation for resource protection. This is particularly problematic in light of the fact that 100 percent local government participation is required for effective protection of most water resources. For example, taking action to protect stream water quality will be ineffective if a single jurisdiction upstream is not doing its part to control pollutants.

The passage of the Georgia Planning Act of 1989 marked the beginning of the state's attempt to work around "home rule" and enlist local governments to adopt land use regulations and other measures for protection of environmentally sensitive areas, including water resources. This legislation solicited local government cooperation by rewarding them for adopting comprehensive plans that meet state minimum requirements. The reward offered is continued eligibility for certain state grant and loan funds.

Included among the state minimum requirements authorized in the Planning Act are standards for local government protection critical environmental resources developed by the Georgia Department of Natural Resources (DNR). These standards are called the Environmental Planning Criteria, and they cover five types of environmental resources – wetlands, water supply watersheds, groundwater recharge areas, river corridors, and mountains. The Environmental Planning Criteria include specific measures that local governments must implement to protect any of these resources that lie within their

jurisdictions. These protection measures include such requirements as establishing buffers along streams, limiting density of residential development, restricting certain types of land uses, or limiting the percentage of impervious surfaces for new developments.

In order to maintain eligibility for state grants and loans offered as reward for compliance with the Planning Act, local governments are required to adopt regulations that, at minimum, include the protection measures specified in the Environmental Planning Criteria, but it is not clear to what extent these regulations are actually being implemented and enforced by the local governments. Under current law, neither the Department of Community Affairs (DCA), which administers the Georgia Planning Act, nor DNR have any oversight authority over local enforcement of these regulations.

The level of enforcement undoubtedly varies from community to community. With modest budgets and staffs, many smaller local governments are probably willing but unable to effectively carry out these regulations. Administering the zoning, subdivision regulations, or building codes programs necessary to put the required protection measures in place can be an expensive and staff-intensive proposition. Smaller local governments do have the option of sharing administration and enforcement responsibilities with other jurisdictions – to spread the costs. However, without enforcement oversight or other pressure from the state, it is unlikely that smaller local governments will pursue such alternatives, and actual implementation of the environmental protection measures will languish in many areas.

One possible solution to this problem would be to formally establish an enforcement monitoring program within either DCA or DNR. This program could be empowered to provide technical assistance to local governments where needed and, as a last resort, recommend suspension of eligibility for state grant and loans for any local government that fails to demonstrate adequate enforcement of the protection measures included in the Environmental Planning Criteria.